2375

SUPREME COURT OF THE UNITED STATES.

No. 135.

THE PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF PENNSYLVANIA, PLAINTIFFS IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT.

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Supreme court of Pennsylvania, middle district.

Among the records of the said court it is thus contained:

Of May term, 1852.

THE PRESIDENT, Directors, and Company of the Bank of Pennsylvania, vs. THE COMMONWEALTH OF PENNSYLVANIA.	No. 86.	THOS. S. BELL, G. MALLOY. PURVIANCE, McCORMICK.

Writ of error to the court of common pleas of Dauphin, exit May 12, 1852; pre. aff. and recog. filed.

June 24, 1852. Writ of error with record returned and filed eo. die. Errors assigned, filed June 25, 1852. Argued Oct. 27, 1852. Judgment of the C. pleas affirmed, Nov. 29, 1852. Rec'd writ of error from the Supreme Court of the United States, filed.

Specification of errors.—Errors to Dauphin, &c.

BANK OF PENNSYLVANIA
vs.
THE COMMONWEALTH OF PENNSYLVANIA.

The court erred—

1. In charging the jury that all the evidence given on the part of the plaintiff in error, outside the act of incorporation, ought to be discarded from the consideration of the court and jury.

2. In saying that when endeavoring to ascertain the meaning of the act incorporating the defendant below, and the consideration paid therefor, the court had no right to examine the journals of the legislature.

3. In charging that there is nothing discernible in the act of 1830, extending the charter of the defendant, by which the bank is exempted from future taxation, either expressly or by implication.

4. In charging that the tax or dividend levied by the act of 1848, and the several acts to which it is supplementary, is not a tax on the franchise of banking, conceded by the charter of defendant below, but upon the property of the stockholders.

5. In charging that the act of 1848, as applied to the defendant below, is not in violation of any contract made by the Commonwealth with the Bank of Pennsylvania, and, consequently, is not unconstitutional and void.

6. In instructing the jury to find a verdict for the plaintiff, in disregard of all the evidence put in by the defendant below on the trial.
7. The general errors.

Copy of the record on file.

Among the records of the court of common pleas of Dauphin county, of August term, 1851, No. 20, it is thus contained, to wit:

Docket entry.

Appeal by defendant from the settlement of the Auditor General and State Treasurer, &c.

McCormick, the Commonwealth of Pennsylvania,
vs.
Dillingham, the President, Directors, and Company of the Bank of Pennsylvania.

(See appeal and specifications filed May 6, 1851; recognisances of defendant, filed November 12, 1851; nar. filed, December 27, 1851.) Defendant pleads non assumpsit, &c. See plea filed April 7, 1852. (J. L.) And now, to wit, May 6, 1852, trial ordered

Whereupon a jury of the county being called, come, to wit, Jacob Hicks, John Cruikshank, Michael Teches, William Huber, Jacob Shaffner, Henry C. Hoffman, Christian Shoffs et al., William Rouch, Martin Getz, Christopher Yeager, Jacob Fissler, Frederick Evitts, twelve good and lawful men of the county of Dauphin, duly selected, summoned, returned, empannelled, balloted, and sworn or affirmed, well and truly to try the issue joined, &c.; and who, upon their oath and affirmations aforesaid, respectively do say, May 6, 1852, that they find a verdict in favor of the plaintiff for thirty-six thousand and ninety-seven $\frac{49}{100}$ dollars, being the tax on dividends from July, 1848, to and including the tax on dividends to July, 1850, and interest from the 15th July, 1851.

	Tax.
Tax, July, 1848, and January, 1849 - - -	$12,500 00
Tax, July, 1849, and January, 1850 - - -	15,000 00
Tax on dividend made July, 1850 - - -	7,500 00
Interest from July 15, 1851, till May 6, 1852 - -	1,697 49
	$36,697 49

May 6, 1852, verdict filed.

Judgment nisi; judgment on the verdict, May 12, 1852; writ of error from the supreme court received and filed, May 22, 1852; notes, points, charge, and exceptions filed.

Dauphin county, *ss.*

Certified from the record, May 22, A. D. 1852.

STEPHEN MILLER, *Proth'y.* [seal.]

Specification of objections.

In the matter of the account in favor of the Commonwealth of Pennsylvania, charging—

The President, Directors, and Company of the Bank of Pennsylvania, with certain items of tax on dividends, and interest on the same, amounting to $\$51{,}068\frac{75}{100}$; settled by the auditor general, and approved by the State treasurer, April 15, 1851.

The President, Directors, and Company of the Bank of Pennsylvania, appeal from the said settlement to the court of common pleas of the county of Dauphin, and file the following—

Specifications of objections.

First. They object to the settlement of this account against the bank, because the said bank is legally exempt from the payment of tax upon dividends in the act renewing and extending its charter.

Second. They object, because, to give the words "expressly exempt," used in the third section of the act of first of April, 1848, "relative to the taxation of bank dividends," any other construction than that of "legally exempt," would be to make the State do what is forbidden by the Constitution of the United States.

Third. They object, because the intention of the legislature to exempt the bank from such tax, in the act renewing and extending the charter, is necessarily implied, not only from the act itself, but from circumstances occurring at the time of its passage, and recorded in the public archives, from cotemporaneous legislation on the same subject, and from the uniform construction and perfect understanding of both parties, from the time the law passed until the 8th of February last.

Fourth. They object, because the charter is a contract between the State and the bank, the obligations of which cannot be impaired without violating the Constitution of the United States.

Fifth. The charge of interest is wrong, because the bank was not liable for interest until three months after a balance was settled against it, and is also inaccurate.

By order of the board of directors, Bank of Pennsylvania, May 3d, 1851.

J. TROTTER, *President.*

Attest—G. P. MILLER, *Cashier.*

Endorsed—

20, August term, 1851; appeal of the President, Directors, and Company of the Bank of Pennsylvania. Rec'd and filed in the office of the auditor general, May 6, 1851; same day transmitted to the prothonotary of the court of common pleas of Dauphin county. Filed May 6, 1851.

Recognisance.

In the court of common pleas of Dauphin county.

In the matter of the appeal by the President, Directors, and Company of the Bank of Pennsylvania, from the settlement of an account between the Commonwealth of Pennsylvania and the said the President, Directors, and Company of the Bank of Pennsylvania, made by the auditor general and State treasurer, showing an alleged balance of fifty-one thousand and sixty-eight dollars and seventy-five cents.

We, Joseph Trotter, William E. Hacker, Mordecai E. Lewis, and Daniel Deal, of the city of Philadelphia, severally acknowledge to owe and be indebted, unto the Commonwealth of Pennsylvania, in the sum of one hundred and two thousand one hundred and thirty-seven dollars and fifty cents, lawful money of the United States, to be made and levied of our respective goods, chattels, lands, and tenements, to the use of the said Commonwealth, if default be made, in the following condition:

Whereas the President, Directors, and Company of the Bank of Pennsylvania has appealed from the settlement of an account between the Commonwealth of Pennsylvania and the said the President, Directors, and Company of the Bank of Pennsylvania, made by the auditor general and the State treasurer, to the court of common pleas of the county of Dauphin, pursuant to the act of assembly of the Commonwealth of Pennsylvania in such case made and provided.

Now, the condition of the recognisance is such, that if the said the President, Directors, and Company of the Bank of Pennsylvania shall prosecute the said appeal with effect, and pay all costs and charges which the court or arbitrators shall award, and also pay any sum of money which shall appear by the judgment of the said court, or *re*ward of arbitrators, to be due by the said President, Directors, and Company of the Bank of Pennsylvania to the Commonwealth, then this recognisance to be void; otherwise of force.

JOSEPH TROTTER,
WM. E. HACKER,
MORDECAI D. LEWIS,
DANIEL DEAL.

Taken and acknowledged this sixth day of May, A. D. 1851, before the subscriber. JNO. J. PEARSON.

Endorsed.

20, August term, 1851.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PRESIDENT, Directors, and Company of the Bank of Pennsylvania.

Recognisance, filed May 6, 1851.

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Declaration.

Dauphin common pleas, August term, 1851.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PRESIDENT, Directors, and Company of the Bank of Pennsylvania. } No.

DAUPHIN COUNTY, *ss.*

The President, Directors, and Company of the Bank of Pennsylvania were summoned to answer the Commonwealth of Pensylvania, of a plea of trespass on the case, &c.; whereupon the said Commonwealth by its attorney complains:

That whereas, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty-one, at the county aforesaid, the said President, Directors, and Company of the Bank of Pennsylvania, were indebted to the said Commonwealth of Pennsylvania in the sum of fifty-one thousand and sixty-eight dollars and seventy-five cents, for so much money by them, the said President, Directors, and Company of the Bank Pennsylvania, before that time had and received for the use of the said Commonwealth of Pennsylvania, and being so indebted afterwards, viz., on the day and year aforesaid, at the county aforesaid, they, the said President, Directors, and Company of the Bank of Pennsylvania, assumed upon themselves, and then and their faithfully promised to the said Commonwealth of Pennsylvania, to pay to the said Commonwealth of Pennsylvania the said sum of fifty-one thousand sixty-eight dollars and seventy-five cents, when they should be thereto afterwards required. Nevertheless the said President, Directors, and Company of the Bank of Pennsylvania, their promise and undertaking aforesaid not regarded, but contriving and fraudulently intending the said Commonwealth in this behalf, craftily and subtily to deceive and defraud, the said sum of fifty-one thousand and sixty-eight dollars and seventy-five cents, unto the said Commonwealth of Pennsylvania, have not paid, nor any part thereof, though often requested so to do, but the same to the said Commonwealth to pay hitherto have refused, and still do refuse, to the damage of the said Commonwealth of Pennsylvania seventy thousand dollars, and therefore the said Commonwealth brings suit, &c.

DOE & ROE, *Pledges, &c.*

Endorsed.

20, August term, 1851.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PRESIDENT, Directors, and Company of the Bank of Pennsylvania.

Narr. in assumpsit, filed November 12th, 1851.

Plea.

In the court of common pleas of Dauphin, of August term, 1851, No. 20.

IN THE CASE OF THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE PRESIDENT, Directors, and Company of the Bank of Pennsylvania.

The said President, Directors, and Company of the Bank of Pennsylvania, by William H. Dillingham, their attorney, come and defend the wrong and injury, &c., and say that the president, &c., did not assume and promise in manner and form as the said Commonwealth hath in this alleged, &c.; and of this said president, &c., put themselves upon the country.

Filed Dec'r 27, 1851.

Notes of president judge common pleas.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
PRESIDENT, Directors, and Company of the Bank of Pennsylvania.

No. 20, August term, 1851.

Appeal by the defendant from the settlement of the accounting officers.

Pleas, non-assumpsit, &c. Act 11 April, 1848, p. 512, 3d sect.

Amount claimed, $51,068 75, as three years tax on dividends; three months allowed after settlement of the amount, to wit, 15th April, 1851, charged as simple interest.

Specification of objections read as filed, dated May 6, 1851:

1. Specification—bank exempt from a tax on its dividends.
2. Exempt by clear implication.
3. It so appears from cotemporaneous construction.
4. The charter a compact.
5. Charge of interest is wrong—only liable after three months.

Returns of the bank for the years 1848, '49, '50:

Return of 1848 received, sworn to 30th March, 1848.

Dividend $62,500, 4 per cent, January, 1848.

July, 1848, same dividend and same per centage.

Report for 1839 read, sworn to 3d Dec., 1849.

Dividend January, 1849, $62,500, 4 per cent.

Surplus fund, $312,500 added to the capital stock, 50 per share on 915 shares, making 2.

Return of 1850 sworn to 5th Dec., 1850; dividend January, 1850, $75,000, 4 per cent.

July dividend $75,000, 4 per cent.

Return for 1851, sworn to 3d December, 1851.
Dividend January, 1851, $93,750, 5 per cent.
July dividend $75,000, 4 per cent.
The July dividend, 1851, is embraced in the settlement made 15th April, 1851. The first dividend of 1851 was taken by estimation before the return was made.

Items settled.—Tax on bank dividends, 3d sec. of 1848, 7th sec., act 15, March, 1849, 10 per cent. on 125,000, dividends declared July, 1848, and January, 1849, amount to - - - - - $12,500 00
10 per cent. on 150,[000,] July, 1849, and January, 1850, 15,000 00
12 per cent. on $168,750, July, 1850, and Jan'y, 1850, 20,250 00

$47,750 00

Interest on the 12,500 from January 15, 1849, to 15th April, 1851 - - - - $1,687 00
Interest on 15,000 from 15th January, '50, to 15th April, 1851 - - - - 1,125 00
Interest on 20,250 from 15th January till 15th April, 1851, date of settlement - - 506 75

Total interest - - - 3,318 75

$51,068 75

Plaintiff closes.

Certified copy of the proclamation of the Governor in 1829, convening the legislature, offered. Objected to. Offered for the purpose of showing what consideration entered into the grant of the charter in 1850, and to enable the court to put a construction on that act, and the other law relating to the charter of the bank. To show what the bank agreed to pay, and the State accept, for the charter.

Bill refers to the constitution as to keeping journals of the two houses.

Greenleaf's Ev., s. 482, 407, as to journals; 475, inspection of books of public officers; 3 Howard, 138; Greenleaf's Ev., s. 482; 1 Saund., pl. & Ev., part 2, 721; 1 Dal., 9; 7 Cowen, 636; 16 Peters, 55, '6; 1 Starkie, p. 160, s. 40, 41, 45; 1 Philips's Ev., 406; 3 Philips, 1145, note, 779; 7 John., 38, 50; 23 Wend., 125; 3 Howard, 1, 24; 5 Bun., 355, 356, 364; 3 Barr., 22, 42; 4 Inst., 23; Journal, vol. 1, H. R., 29, 30.

The offer afterwards made as per writing. The evidence received after objection by plaintiff's attorney, and at his request this exception sealed.

JNO. J. PEARSON. [SEAL.]

Proclamation, dated 15th October, 1829, Gov. Shultz, read; relates to the laws authorizing the Governor to borrow money, and recites a failure; urges the legislature; message of Governor delivered 14th

March, 1829, relates to the monitary affairs of the State and the subject of the proclamation; recites that our stock will not sell at par.

Documents accompanying the message. Letters directed to the banks by secretary of the Commonwealth, asking for temporary loans under their charters. Answers offering temporary loans and the acceptance by the State of these loans. All showing the great pecuniary embarrassment of the State.

Letters from the commissioner of loans showing the efforts made to borrow money.

No bids obtained. No loan, either temporary or permanent, made.

1 vol. House Journal, p. 26, read; loan of $2,000,000, and so much as refers to the charter of the Bank of Pennsylvania referred to the committee of ways and means; January 11, 1830, report of the committee at page 242 read, showing a bill reported. Bill read to raise money and incorporate the Bank of Pennsylvania, to borrow 4,000,000 on transferable stock, redeemable in 1858, bearing interest at 5 per cent., continues the charter of the bank for 25 years; to lend the money referred to in the 1st section, capital stock 2,500,000; nothing said in the bill as to a premium on the loan. Read p. 274, January 18, showing action on the bill.

Reads from page 283, January 19, 1830, resolution authorizing the Governor to borrow four millions from the bank; tax on dividend 8 per cent.

Reads page 288, date of January 20; also pages 291–2, action on bill No. 92: Charter of the bank, and the loan, page 296, January 21. Page 300, action on the bill. Motion to discharge the committee and refer it to the house; at page 304 moves to refer it to the Committee on Banks; refused. Amended so as to exempt the bank from tax of 8 per cent. on dividends. Majority referred it to committee, with instructions to exempt the bank from tax on dividends. Continues through several pages, showing the action on motions to refer the bill. Page 318, date of January 26, committee report, with amendments, a bill to charter the Bank of Pennsylvania.

Reads from page 386, February 6: The number changed to bill 156, page 410, February 11. Page 415, date of February 11: Bill again up; motion to strike out the tax on dividends; motion to amend by making the bank liable to tax of 8 per cent. on dividends, as per act of 1824.

Page 419, February 20, action on the above motion: Amended as moved, and tax on dividends struck out. Page 421, amended so as to require four millions, and pay a premium of 3½ per centum.

Page ——, motion to amend by authorizing a loan of four millions; and, to borrow the same, generally requires the bank to take all at 2½ per cent. Page 421, motion to make loan of $3,500,000; not agreed to. Page 446, February 16, motion to refer to committee struck out, but requiring loan to the State.

Senate Journal. Act of 1813–'14, p. 154, regulating banks, passed 31st March, 1813; vetoed, and passed in 1814: Proposes tax on di-

vidends in 10th section; charter of banks neglecting to pay forfeited. Tax as payment of the charter act of 1824, p. 79, passed 25th March, 1824; section 9 repeals all former laws. 24th article of 3d section requires 8 per cent. of tax on dividends of all banks, except Farmers & Mechanics' Bank of Pennsylvania, not incorporated, or named in that act. Legislature reserves the power to repeal the charter. Bank of Pennsylvania not embraced in that provision.

Act of 1826 establishes bank in Erie; imposes terms under act of 1824—tax on dividends.

Pamphlet L., 1828–'29, page 116: Wyoming Bank, 11, 12, and 13th sections of act of 1824 extended to that bank. Tax on dividends and power to revoke.

Page 148–'49: Lancaster Bank, right to assume franchises inserted, and reserves power to impose future taxes, &c. Page 361: Subjects to bonus or premium, as may be demanded, and to such laws as may be enacted.

Pamphlet L., 1829–'30, p. 178: Buck's County Bank, Northampton Bank, 8th section subjects them to all restrictions, and to payment of bonus, as may be hereafter enacted.

Pamphlet L., 1830–'1, p. 78. Mechanics' Bank charter extended for 10 years; regulates bank subject to bonus or premium, and subjects to all future regulations; same to Farmers' Bank of Reading; page 77, bank in Philadelphia subjected to the same regulation; page 298, Lebanon Co. bank, North'd Co. Bank subjects them to act of 1824, and also to bonus or premium, future regulations on restrictions.

1830–'1, 244 extends act of 1824 to Brownsville, and another subjects to premiums and regulations, &c.

1831–'2. Page 234, Moyamensing bank, premium for charter, subjects to act of 1824, also to the provisions of Lebanon bank.

1831–'2. Girard bank subject to act of 1824, and to law regulating Lebanon bank; requires premium of 25,000, and 25,000 again; same, p. 601, Middletown bank subject to this same regulation as Lebanon bank, and other restrictions and regulations, reserves power to fix *former* premium, &c.

Laws, 1833–'4, p. 8, Bank of Pittsburgh, subject to alterations and such premiums as may impose.

Bank of Kensington (64) subject to the same tax on dividends, &c.

Bank at p. 96, subject to alterations, taxes on dividends, &c.

Page 114. Charters several banks subject to alterations; tax on dividends; and p. 116, same provisions to York bank; Erie, same. 1827–'8, p. 46, Bank of Penn township enacted, subject to penalties and restrictions.

Page 68. Miners' Bank of Pottsville subject to same provisions and restrictions.

Acts relating to Bank of Penna., first act, 30 March, 1793; various supplements in 1810, chartered for 20 years. Law 13 March, 1830, to authorize a loan and incorporate the Bank of Pennsylvania for a period of 25 years. Sec. 8 requires a loan of 4 million dollars at a premium

of 5½ per ct.; also requires the bank to loan three millions without any mention of premium; duty of commissioner of loans transferred to Bank of Pennsylvania, who before had a salary of $1,000. Bank to transfer of stock, &c., without compensation. Incorporate certain parts of act of 1824, but not those relating to tax on dividends, &c.

Requires deposites to be made in Bank of Pennsylvania of all debts, money to be drawn by State treasurer, &c.

Act 11 June, 1840, imposes a tax on corporations ½ mill on every dollar of dividends, and one on property.

It is conceded the bank has been paying the tax under the act of 1840 ever since its passage, but it is said by the defendants that it was paid by mistake, and the bank is not liable therefor. It was paid as a tax on property.

Defendant closes.

Plaintiff reads an act to incorporate the Pennsylvania and Ohio Canal Company; authorizes the Mechanic's Bank to pay $100,000, and relieves it from all future taxation, and continues its charter for 25 years; required to subscribe 1,000 shares of stock in said canal company, or pay $100,000 dollars to the State.

It is admitted that the State owned three-fifths of the stock in the Bank of Pennyslvania until the year 1843, when it was sold.

Western Bank of Philadelphia, 1832–'3, p. 503, Mechanic's and Manufacturer's Bank, Northern Liberties, one-third bonus, 1833; one-third, 1834; one third, 1835; subjected afterwards to tax on dividends.

Merchants and Manufacturers', Pittsburg. p. 109, $30,000 required to be paid by the charter, in consideration of said clause, paid the graduating tax notwithstanding.

Pamphlet, 1835–'6, p. 504. Merchants and Manufacturers', of Northern Liberties, bonus of 30,000 for renewal of charter, but is subject to tax in terms.

Charge.

The first question which naturally presents itself is, are there any disputed facts in this case to be submitted to the jury; or is there any legal inference to be drawn from the facts proved?

Evidence has been given of the state of the country when the act of 1830 was passed—of the great financial embarrassments of the State, the impossibility of borrowing money, the convening of the legislature, and the action of one branch of that body in relation to the passage of this act; the various forms which the bill assumed before it became a law, the amendments proposed, and parts inserted or struck out, for the purpose of enabling us to put a construction on the act, and ascertain the intention of the legislature. This evidence was offered and recevied to prove the actual consideration agreed to be paid for a continuance of the bank charter for a period of twenty-five years, and to raise an inference that it was intended by both of the parties to that contract, that no further burdens in the form of taxes should be imposed on the in-

stitution. After a careful review of all the evidence, we are satisfied it should be entirely discarded from our consideration, and that this charter, like all other laws, must be expounded from what is apparent on its face. That it must be construed by the court alone, and from its expressions we can discover that the Legislature intended to grant, and the bank to receive, the charter, relieved from all future charges of every description; it became a contract which the State has no power to violate.

In construing a law, it would be dangerous in the extreme to resort to extrinsic evidence to ascertain the intention of the legislature. We *we* should be much more likely to be misled than enlightened by looking into the speeches of the members, or the journals of either house. It would be following an ignis fatuus, which Proteus like, assumes a thousand shapes. The law making power consists of distinct bodies, senate, house of representatives, and governor. If we had even the declared will of the one body expressed on its journals, yet that might not have been the intention of the other, which construed the bill according to its language, and enacted it with a different intention. Or the Governor might have refused his sanction, had that which is now asked to be inferred been expressed on the face of the instrument.

In construing this law we have a right to take into consideration the state of the country at this time, and look into others passed in pari materia, but have no right to examine the journals, or consider the intention of particular members, or of either branches of the law-making power.

There are no facts for your consideration. The only questions are those of law, which must be determined by the court.

In the year 1848, a law was passed declaring "that all banks of this Commonwealth, whose charters have been extended or renewed, are hereby made subject to the graduated tax upon dividends provided for by the act relating to banks, passed April 1st, 1835, except in cases where there is an express exemption in the act extending or renewing such charter."

It is contended that the defendant does not come within the provisions of this act; that, by the terms of its charter, it is exempted from taxation on its dividends; if not in express terms, at least by clear and necessary implication; and if the exemption is clearly to be implied, so much of the law as declares that it must be express is unconstitutional and void. If the bank is by express words exempted from taxation it does not come within this act; and if the exoneration is clearly and manifestly to be implied from the terms of its charter, which appears to have been purchased for a valuable consideration, the legislature had no right to impose a tax on it. But the power of taxation is an incident of sovereignty, necessary to the well-being and even existence of a State, and the relinquishment of it is never to be assumed without clear words or necessary implication; there is no express exemption in the defendant's charter.

We look in vain through the act of the 13th of March, 1830, which

extended the charter for a period of twenty-five years, for such exemption. Nor can we discover that there is any to be implied, either from the original charter or that act. True, the chartered privileges were bought and paid for, and if the bank had been in terms, or by clear implication, discharged from all future burdens in the form of taxes, it would be our duty to declare so, even if in so doing we should be obliged to decide that the legislature had transcended its constitutional power. The grant of a charter is a contract between the corporation and the State; and when conferred, and an interest*ed* is vested in the corporators, it transcends the power of the legislature to revoke or change it, unless the authority so to do is reserved. If the law creating the grant declares that the property or privilege shall be forever exempted from taxation, no taxes can be imposed, whether the grant be of a corporate franchise, as in Gordon vs. the Appeal Court, 3 Howard, 133, or of land, as in the State of New Jersey vs. Willson, 7 Cranch, 164. Although sitting in an inferior court, we have no doubt that it is our bounden duty to declare an act of assembly, which conflicts with the Constitution of the United States, or of this Commonwealth, utterly void. It is only deciding between the superior and inferior law, and presents much less difficulty than occasionally arises between conflicting statutes. When an act of assembly comes in conflict with the Constitution of the United States, the superior as well as the inferior courts of the States are bound by the decisions of the Supreme Court of the United States, and it is vain and presumptuous to set up our private judgments against them. It has been contended that the act of 1848 impairs the obligation of a contract. If so, it is void. There is no pretence that the original charter of the bank contained any express exemption from taxation; but it is contended that, in passing the act of 1830, the legislature intended to relieve the bank from any burthens during the terms of its charter, except those imposed by that act. We have given the law referred to the most careful consideration, and have come to the conclusion that there is no such exemption, either express or implied. The act prolongs the charter of the bank for a period of twenty-five years from the expiration of the prior grant; the capital stock is increased to two and one-half millions, and the bank is made the general depository of the public money. It is subjected to certain provisions contained in the acts of 1824 and 1829, no part of which relates to taxation, and requires the institution to lend four millions of dollars to the State, at an annual interest of five per centum, and pay a premium therefor of 5½ per cent., at a time when our public loans were not negotiable at par; and also to make a further loan of three millions, at a like rate of interest, when required by the State, and transact all the business of the Commonwealth in regard to her loans, and the transfers thereof, without compensation. A heavy bonus is thus exacted from the bank for a renewal of its charter; but throughout the whole act there is not one word on the subject of taxation, present or prospective. It then stands like all other grants of property or privileges conferred by the State for value, subject to taxation according to

the wants of the government. Lands are granted and paid for, yet they are afterwards taxed. Privileges are granted and paid for; why shall they be exempt? It is quite probable that, had the bank exacted it, in the then depressed state of our finances the State, in order to raise the money, would have conferred the same privileges, with the further one of exemption from future impositions. Nay, more, it is even possible that both parties understood it would be discharged, but they did not say so. A State can only act through its laws, and when the intention is to relieve land from all future burdens, it uses apt expressions, as in New Jersey vs. Willson, already referred to; or when to grant such a privilege to a bank it is done in express terms, as in the cases of the Mechanics' Bank of the city and county of Philadelphia, and the Maryland banks.

This case is, in many of its features, very similar to that of the Providence Bank vs. Billings, 4 Peters, 514. The State of Rhode Island had granted a charter to the Providence Bank, in 1791, and in the year 1822 imposed a tax on it, the payment of which was resisted, on the ground that it was a violation of the charter. In delivering the judgment of the court Chief Justice Marshall says, "No words have been found in the charter which, in themselves, would justify the opinion that the power of taxation was in the view of either of the parties, and that an exemption was intended, though not expressed. The plaintiff finds great difficulty in showing that the charter contains provisions, either express or implied, not to tax the bank." The learned judge, in that case, further shows the vital importance of the taxing power, and declares, "the community has a right to insist that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the State to abandon it does not appear." It is true, that there no consideration was paid for the charter, yet that can make no difference in regard to the rights of the corporators. The case of Gordon vs. the Appeal Tax Court, 3 Howard, p. 133, has been relied on by both sides There certain banks, by the terms of their charters, were, for a valuable consideration, exempted from all further burthens of taxation; others paying a bonus were incorporated without such exemption, and a distinction is taken between the right to tax the franchises of the bank and the property of the corporation or stockholders. It is declared that, as to such as were expressly exempted from taxation, no tax could be imposed; but such as had purchased and paid for their franchises would hold them clear of further impositions, but the property of the bank or stockholders could be taxed. The act of 1848 is supposed to be a tax on the franchise, and, as that was paid for in obtaining the charter, is unconstitutional and void. I do not understand this to be a tax on the franchises of the bank, but upon the property of the stockholders. It arrests a portion of the money coming to each individual, and requires it to be paid over to the State, and that, too, in exact proportion to the amount coming to him.

The franchises of the bank are its privileges to do business, to carry on banking, sue and be sued, issue its own notes and drafts, lend

money on interest, make profits, and declare dividends, and the dividends when declared are the property of the respective stockholders; they are none of the franchises of the institution, and are consequently, under the express words of the case cited, subject to taxation.

This subject has been well considered by our supreme court, in the case of the Eastern Bank vs. the Commonwealth, 10 Barr, 442, where it was held that, although a bank had purchased and paid for her franchises, and it was expressly declared in the charter that it should be subject to a tax of eight per cent. on each yearly dividend, yet the legislature had, at one after time, the power to increase the amount of taxes on the dividends.

The learned judge who declared the opinion of the writ in that case says: "If such exemption exists, it must be the result of a deliberate intention to relinquish this prerogative of sovereignty, distinctly manifested." The tax imposed in terms is looked upon as a simple declaration of the amount then to be paid by the institution, and contains no intimation of an agreement or understanding that it shall not be increased thereafter; yet the legal maxim, facit cessare tacitum, applied with great force to that charter, and made the implication of a relinquishment of the right to tax much stronger than in the case under consideration.

It has been conceded in the argument, that this bank is subject to the tax imposed by the act of the 11th of June, 1840, and has always paid it. I am unable to see any distinction between the principle of that act and the one imposing a tax on dividends. That, like the one now claimed, is imposed on the capital stock in proportion to the amount of dividends paid to the stockholders. Like this, has to be retained from the stockholder by the bank or other corporation, and paid into the State treasury. There is not in principle the slightest difference between the two. If the State can lawfully impose the one, it can the other. We therefore instruct you to render a verdict in favor of the Commonwealth for the amount of taxes claimed on the dividends of this bank down to and including that of July, 1850, with interest thereon from the 15th day of July, 1851, being three months after the settlement by the accounting officers. You must include the claim for the dividend in January, 1851, as the settlement of the tax on dividends is made to the last of November of each year. You cannot apportion it between July and November; consequently that of January, 1851, must come into the next annual settlement. This charge sufficiently answers all the points presented by the defendant, and we do not consider it necessary to notice them in extenso.

To this charge the defendant's counsel except, and at their request this bill of exceptions sealed.

JNO. J. PEARSON. [L. S.]

Verdict.

We find a verdict in favor of the plaintiff for thirty-six thousand

six hundred [and] ninety-seven dollars [and] forty-nine cents, being the tax on dividends from July, 1848, to and including the tax on dividends to July, 1850, and interest from the 15th July, 1851.

Tax, July, 1848, and January, 1849 - - -	$12,500 00
Tax, July, 1849, and January, 1850 - - -	15,000 00
Tax on dividends, July, 1850 - - - -	7,500 00
	$35,000 00
Interest from July 15, 1851, till May 6, 1852 - -	1,697 40

Filed May 6, 1852.

The court is respectfully requested to charge the jury as follows:

First. That when a bank purchases a charter by a bonus, consisting of a loan made to the Commonwealth at a premium, or by the payment of a gross sum agreed on between the parties, the legislature cannot further burden the franchise by levying a further impost on dividends, present and prospective, unless it be so agreed by the contracting parties.

Second. If the jury should be of opinion that the loan and premium thereon mentioned and provided for in the act of 1830, extending the charter of the defendant, was agreed upon by the contracting parties as the consideration in purchase of the franchise granted by the act in lieu and exclusion of a tax upon dividends, it is not in the constitutional power of the Commonwealth to add to or increase that consideration, by laying an impost on the annual dividends thereafter to be declared and divided by the said defendant among its stockholders.

Third. That there is evidence in the cause from which the jury may ascertain that the agreement and understanding of the parties was as stated in the foregoing point.

Fourth. That the act of 1830, extending the charter of the Bank of Pennsylvania, is a contract executed, and the consideration paid and accepted by the Commonwealth, and, therefore, the act of 1848 applied to the Bank of Pennsylvania is unconstitutional and void.

Fifth. That the right to make and declare dividends of the profits of a bank is a part of the franchise granted by the charter, and when an impost is levied, or to be levied, on dividends payable to the Commonwealth, it is to be considered as in purchase of the charter, unless otherwise stipulated, which precludes the legislature from levying further imposts on dividends, unless the power to do so be reserved by the charter or subsequently conceded by the bank.

Sixth. That where, by the several acts of assembly, given in evidence, it appears a per centage is charged upon the future dividends to be declared by the bank so chartered to be paid to the Commonwealth, such per centage is not to be deemed a tax upon the corporate property of the said bank, but a premium or bonus paid, or to be paid, in purchase of the franchise, which the Commonwealth is not at liberty to add to, or increase, unless she has reserved the power to do so in the

said acts of incorporation, or it has been subsequently conceded by the corporation.

Seventh. That the act of 11 April, 1848, whether considered alone, or in reference to, and in connexion with, the otheracts in pari materia, given in evidence by the defendant, is not like the act of , an act levying a tax upon the corporate property of the bank, in the proper acceptation of the term "tax," but is to be regarded as the imposition of additional sums as considerations, or in payment of the several franchises theretofore conceded to the corporated banks of this Commonwealth; and is, therefore, in its application to the Bank of Pennsylvania, unconstitutional and void.

Eighth. That in this proceeding under the act of 30th March, 1811, the Commonwealth can only recover interest on the principal sums charged in the account settled by the officers of the State, if any, to be computed three months after the date of the said settlement made.

COMMONWEALTH
vs.
BANK OF PENNSYLVANIA.

Defendant offers to give in evidence—

1. The proclamation of the Governor, dated 15th October, 1829, convening an extra and special session of the legislature of Pennsylvania.

2. Message of the said Governor to the said legislature, on the fourth of November, 1829; and—

3. Correspondence between the secretary of the Commonwealth and the several incorporated banks, companies, and individuals, in the year of 1829, as contained in the journal of the house of that year, on the subject of a temporary and permanent loan, authorized by the legislature, as set out in the journals of the house of representatives; for the purpose of showing the embarrassed financial condition of the Commonwealth about that time; the necessity of effecting a loan to relieve said embarrassment, and that the commissioner of loans, appointed by the Governor under an act of assembly, failed after repeated efforts to negotiate the said loan, except a small portion thereof.

4. In connexion with the foregoing, the act of March, 1830, rechartering the Bank of Pennsylvania, to show that a negotiation had been opened by the State authorities with the said bank, to make a loan of $4,000,000 to the said Commonwealth, in relief of the said financial embarrassments, and that the said loan was made by the said bank to the said Commonwealth at a premium amounting to $220,000, in purchase of an extension of its corporate privileges for another term of twenty-five years, from — April, 1833.

5. The journals of the senate and house of representatives, for the years 1829–'30, to show that the said loan, and premium thereon, was accepted in full furchase of the said corporate privileges and immunities, and that the said bank should be exempt from any further

future tax upon dividends to be declared of profits, during the continuance of the said charter.

6. The various acts of assembly, enacted between the years 1833 and 1834, to show that in all cases where an impost was levied on the future dividends to be made by the said incorporated banks, it has regarded as the consideration in purchase of the franchise of banking in each particular case, reserving the right to increase the impost upon future dividends at and after the year 1829.

Ruling on offer.

Taking this whole offer in connexion, some portion of it may possibly be evidence to show the consideration paid by the bank for a renewal of its charter, and what was understood at the time. It also tends to explain the situation of the country; and thus, by seeing to what the law applied, we shall be the better enabled to construe it.

Being in writing, we can determine after the papers are read whether they do or do not raise any question for the jury; and if not, we will withdraw it from their consideration. To this admission the bill of exceptions sealed in the notes applies.

JNO. J. PEARSON.

BANK OF PENNSYLVANIA
vs.
THE COMMONWEALTH OF PENNSYLVANIA.

Be it remembered, in the term of August, anno Domini 1851, came the Commonwealth of Pennsylvania into the court of common pleas, in and for the county of Dauphin, in the said Commonwealth, and impleaded the President, Directors, and Company of the Bank of Pennsylvania in a certain appeal taken and entered in the said court, from a certain settlement of accounts, stated by the auditor general and State treasurer of the said Commonwealth, against the said President, Directors, and Company, averring a certain sum of money to be due from the said President, Directors, and Company to the said Commonwealth, (prout a certificate of the said settlement, and a copy of the entry of the said appeal and specification of objections hereunto annexed,) in which said appeal the said Commonwealth, by its attorney, declared (prout narr.) and the said President, Directors, and Company pleaded (prout plea.) And thereupon issue was joined between them. And afterwards, to wit, at a session of the said court, held at the county aforesaid, before the honorable John J. Pearson, president of the said court, on the 5th and 6th day of May, anno Domini 1852, the aforesaid issue, between the said parties, came to be tried, by a jury of the said county, for that purpose duly empannelled; at which day came as well the said plaintiff as the said defendants, by their respective attorneys; and the jurors of the jury aforesaid, empannelled to try the said issues, being also called, came; and were then and there in due man-

ner chosen, and sworn or affirmed to try the said issue; and upon the said trial the said plaintiff put in evidence before the said court and jury the certificate of the said settlement, so as aforesaid made and stated by the said auditor general and State treasurer, (prout the said copy annexed;) and the entry of the said appeal therefrom, by the said defendant, with the specifications of objections thereto, (prout the said copies annexed;) and also the returns made by the said defendant to the said auditor general in the years 1848, 1849, and 1850, being statements of the affairs of the said defendant, as one of the chartered banks of the said Commonwealth, in pursuance of the acts of assembly in such case made and provided, (prout copies of the said returns hereto annexed;) and thereupon the said plaintiff closed its evidence.

Whereupon the said defendant, by its counsel, gave evidence to the said court and jury as follows, to wit:

First. The public proclamation of the Governor of the said Commonwealth, issued on the 15th day of October, 1829, convening the legislature thereof; (prout a copy of the said proclamation, hereto annexed.)

Second. The message of the said Governor, directed to the said legislature, dated the 4th day of November, 1829; (prout a copy of the said message, hereto annexed.)

Third. The several documents and writings appended to and accompanying the said message, being letters written by the secretary of the Commonwealth to many of the banks chartered by the legislature thereof, urging temporary loans of money to be made to the said Commonwealth; the answers of the said banks thereto, and certain letters written by the commissioner of loans of the said Commonwealth, to the Governor thereof, and the public functionaries, at various times; (prout copies of the said letters, hereto annexed.)

Fourth. Various entries in, and portions of, the journal kept by the house of representatives, in the session of the year 1829 and 1830, showing the actions, reports, and resolutions of the said house, and of the several committees thereof, at the said sessions, as the same is contained and shown at pages 26, 27, 242, 274, 283, 288, 291, 292, 300, 304, 305, 306, 307, 308, 309, 310, 318, 386, 410, 415, 419, 420, 421, 424, 442, 447, 453, 539, 589; the said printed journals to be referred to, and read with the same effect, as if copies thereof were hereunto annexed.

Also the bill to incorporate the Bank of Pennsylvania, as originally reported by the committee of ways and means; (prout the said bill, hereunto annexed.)

Sixth. Various acts of assembly enacted by the legislature of the Commonwealth, chartering and rechartering banks, from the year 1814 to 1848, which are hereafter stated, to be referred to and read from the printed acts of assembly of the Commonwealth, with the same effect as if copies of the same were hereunto annexed.

And it was then and there conceded by the counsel of the said defendant, that it, the said defendant, had always paid to the said Com-

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monwealth the tax levied upon the capital stock of this bank by the act of June 11th, 1840.

Whereupon the said plaintiff gave in evidence to the said court and jury, by way of rebutting testimony, various acts of assembly, chartering and rechartering certain banks, passed by the legislature of the said Commonwealth, as the same are published in certain pamphlet laws, published by authority of the said legislature; which acts are to be referred to and read from the pamphlet laws passed by the assembly of the Commonwealth, with the same effect as if copies of the same were hereunto annexed. And thereupon the said plaintiff again closed its evidence.

And the evidence of the said plaintiff and the said defendant being finally closed, the said defendant did then and there submit to the consideration of the said president judge certain legal propositions, and, by its counsel, respectfully requested the said judge to instruct the said jury in accordance therewith; (prout copies of the said propositions, hereto annexed.)

But the said judge did then and there charge and instruct the jury as set forth in said charge filed.

GARRICK MALLORY,
Attorney for the plaintiff in error.
JAS. McCORMICK,
Attorney for Commonwealth.

Settlement by auditor general, &c.

The President, Directors, and Company of the Bank of Pennsylvania in account with the Commonwealth of Pennsylvania, Dr.

For tax on dividends per 3d section of the act of 11th April, 1848, and 7th section of the act of 15th March, 1849, viz:

To 10 per cent. tax on $125,000, dividends declared July, 1848, and January, 1849 -	$12,500 00	
To 10 per cent. tax on $150,000, dividends declared July, 1849, and January, 1850 -	15,000 00	
To 12 per cent. tax on $168,750, dividends declared July, 1850, and January, 1851 -	20,250 00	
		$47,750 00
To interest on $12,500 from 15th January, 1850, to 15th April, 1851 - - -	$1,687 50	
To interest on $15,000 from 15th January, 1850, to 15th April, 1851 - - -	1,125 00	
To interest on $20,000 from 15th January, 1851, to 15th April, 1851 - - -	506 25	
		$3,318 75
Due Commonwealth - - - -		$51,068 75

Settled and entered. JOHN N. PURVIANCE.
Auditor General's office, April 15th, 1851.
Approved: JOHN M. BICKEL.
Treasury office, April 15th, 1851.

ner chosen, and sworn or affirmed to try the said issue; and upon the said trial the said plaintiff put in evidence before the said court and jury the certificate of the said settlement, so as aforesaid made and stated by the said auditor general and State treasurer, (prout the said copy annexed;) and the entry of the said appeal therefrom, by the said defendant, with the specifications of objections thereto, (prout the said copies annexed;) and also the returns made by the said defendant to the said auditor general in the years 1848, 1849, and 1850, being statements of the affairs of the said defendant, as one of the chartered banks of the said Commonwealth, in pursuance of the acts of assembly in such case made and provided, (prout copies of the said returns hereto annexed;) and thereupon the said plaintiff closed its evidence.

Whereupon the said defendant, by its counsel, gave evidence to the said court and jury as follows, to wit:

First. The public proclamation of the Governor of the said Commonwealth, issued on the 15th day of October, 1829, convening the legislature thereof; (prout a copy of the said proclamation, hereto annexed.)

Second. The message of the said Governor, directed to the said legislature, dated the 4th day of November, 1829; (prout a copy of the said message, hereto annexed.)

Third. The several documents and writings appended to and accompanying the said message, being letters written by the secretary of the Commonwealth to many of the banks chartered by the legislature thereof, urging temporary loans of money to be made to the said Commonwealth; the answers of the said banks thereto, and certain letters written by the commissioner of loans of the said Commonwealth, to the Governor thereof, and the public functionaries, at various times; (prout copies of the said letters, hereto annexed.)

Fourth. Various entries in, and portions of, the journal kept by the house of representatives, in the session of the year 1829 and 1830, showing the actions, reports, and resolutions of the said house, and of the several committees thereof, at the said sessions, as the same is contained and shown at pages 26, 27, 242, 274, 283, 288, 291, 292, 300, 304, 305, 306, 307, 308, 309, 310, 318, 386, 410, 415, 419, 420, 421, 424, 442, 447, 453, 539, 589; the said printed journals to be referred to, and read with the same effect, as if copies thereof were hereunto annexed.

Also the bill to incorporate the Bank of Pennsylvania, as originally reported by the committee of ways and means; (prout the said bill, hereunto annexed.)

Sixth. Various acts of assembly enacted by the legislature of the Commonwealth, chartering and rechartering banks, from the year 1814 to 1848, which are hereafter stated, to be referred to and read from the printed acts of assembly of the Commonwealth, with the same effect as if copies of the same were hereunto annexed.

And it was then and there conceded by the counsel of the said defendant, that it, the said defendant, had always paid to the said Com-

2386.

monwealth the tax levied upon the capital stock of this bank by the act of June 11th, 1840.

Whereupon the said plaintiff gave in evidence to the said court and jury, by way of rebutting testimony, various acts of assembly, chartering and rechartering certain banks, passed by the legislature of the said Commonwealth, as the same are published in certain pamphlet laws, published by authority of the said legislature; which acts are to be referred to and read from the pamphlet laws passed by the assembly of the Commonwealth, with the same effect as if copies of the same were hereunto annexed. And thereupon the said plaintiff again closed its evidence.

And the evidence of the said plaintiff and the said defendant being finally closed, the said defendant did then and there submit to the consideration of the said president judge certain legal propositions, and, by its counsel, respectfully requested the said judge to instruct the said jury in accordance therewith; (prout copies of the said propositions, hereto annexed.)

But the said judge did then and there charge and instruct the jury as set forth in said charge filed.

GARRICK MALLORY,
Attorney for the plaintiff in error.
JAS. McCORMICK,
Attorney for Commonwealth.

Settlement by auditor general, &c.

The President, Directors, and Company of the Bank of Pennsylvania in account with the Commonwealth of Pennsylvania, Dr.

For tax on dividends per 3d section of the act of 11th April, 1848, and 7th section of the act of 15th March, 1849, viz:

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To interest on $12,500 from 15th January, 1850, to 15th April, 1851 - - -	$1,687 50	
To interest on $15,000 from 15th January, 1850, to 15th April, 1851 - - -	1,125 00	
To interest on $20,000 from 15th January, 1851, to 15th April, 1851 - - -	506 25	
		$3,318 75
Due Commonwealth - - - -		$51,068 75

Settled and entered. JOHN N. PURVIANCE.
Auditor General's office, April 15th, 1851.
Approved: JOHN M. BICKEL.
Treasury office, April 15th, 1851.

AUDITOR GENERAL'S OFFICE,
Harrisburg, 6th May, 1851.

I certify the above to be a true copy of the original on file in this department.

[L. S.] Witness my hand and seal of office the day and year aforesaid.
E. BANKS, *Auditor General.*

In the matter of the account in favor of the Commonwealth of Pennsylvania, charging the President, Directors, and Company of the Bank of Pennsylvania with certain items of tax on dividends, and interest on the same, amounting to $\$51{,}068\frac{75}{100}$, settled by the auditor general April 15th, 1851, and approved by the State treasurer.

The President, Directors, and Company of the Bank of Pennsylvania appeal from the said settlement to the court of common pleas of the county of Dauphin, and file the following:

Specification of objections.

First. They object to the settlement of this account against the bank, because the said bank is legally exempt from the payment of tax upon dividends, in the act renewing and extending its charter.

Second. They object, because, to give the words "expressly exempt," used in the third section of the act of the 1st of April, 1848, "relative to the taxation of bank dividends," any other construction than that of "legally exempt," would be to make the State do what is forbidden by the Constitution of the United States.

Third. They object, because the intention of the legislature to exempt the bank from such tax, in the act extending and renewing its charter, is necessarily implied, not only from the act itself, but from circumstances occurring at the time of its passage, and recorded in the public archives; from cotemporaneous legislation on the same subject, and from the uniform construction and perfect understanding of both parties from the time the law passed until the 8th of February last.

Fourth. The charter is a contract between the State and the Bank, the obligations of which cannot be impaired without violating the Constitution of the United States.

Fifth. The charge of interest wrong, the bank not being liable for interest until three months after a balance settled against it; the calculation is also inaccurate.

PENNSYLVANIA, *ss.*

[Place of the great seal.] J. Andrew Shulze. In the name and by the authority of the Commonwealth of Pennsylvania, by J. Andrew Shulze, Governor of the said Commonwealth—

A Proclamation.

Whereas, by an act of the general assembly of this Commonwealth, passed the twenty-second day of April last, entitled "An act relative to

the Pennsylvania canal and railroad," the Governor is authorized to borrow, on the credit of the Commonwealth, two millions and two hundred thousand dollars, to be expended in the construction of the Pennsylvania canal and railroad, and to be reimbursed at any time after twenty-five years from the first of December next.

And whereas, by the same act the Governor is authorized to negotiate temporary loans for such sums as should be necessary previous to the negotiation of the permanent loan, to be repaid out of the permanent loan aforesaid within six months from the passage of said act. And the failure to obtain on permanent loan the sums required having made it necessary to obtain on temporary loan a large portion of the sum authorized to be borrowed; which temporary loans, agreeably to the provisions of the said act, will become payable on the twenty-second day of this month; and the commissioner of loans having reported to me that only a part of the permanent loan has been obtained, and it appearing to be very improbable that the residue will be obtained in time to meet the engagements relative to the repayment of the temporary loans, I have deemed it expedient to convene the general assembly, with as little delay as possible, to the intent that, on this extraordinary occasion, the legislature may have an opportunity, at an early day, of adopting such measures as shall be thought necessary to the fulfilment of the engagements which have been entered into on the part of the State, under the sanction of its laws.

Therefore, and by virtue of the authority to me in such case given, in and by the constitution of the Commonwealth, I have issued this proclamation, hereby convening the general assembly to hold a session on Tuesday, the third day of November next, at the State Capitol, at Harrisburg; and of which time and place of convening all persons therein concerned are requested to take notice.

Given under my hand and the great seal of the State, at Harrisburg, this fifteenth day of October, in the year of our Lord one thousand eight hundred and twenty-nine, and of the Commonwealth the fifty-fourth.

By the Governor:

C. BLYTHE,
Secretary of the Commonwealth.

SECRETARY'S OFFICE.

PENNSYLVANIA, *ss.*

I do hereby certify, that the foregoing and annexed is a true and correct copy of the original proclamation, as the same remains of record in Rough Letter book, volume 7, pages 373 and 374, and now remaining in this office.

In testimony whereof I have hereunto set my hand, and caused the seal of the secretary's office to be affixed, at Harrisburg, this [L. S.] third day of May, in the year of our Lord one thousand eight hundred and fifty-two.

E. S. GOODRICH,
Deputy secretary of the Commonwealth.

"An act to authorize a loan to defray the expenses of the Pennsylvania canal and railroad," and to continue, for a further time, "An act to incorporate the subscribers to the Bank of Pennsylvania," and for other purposes.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, and it is hereby enacted by the authority of the same, That the Governor be, and he is hereby, authorized to borrow, on the credit of the Commonwealth, from the President, Directors, and Company of the Bank of Pennsylvania, a sum or sums of money, in the whole not exceeding four millions of dollars, to be paid into the State treasury in instalments of not less than three hundred and thirty-four thousand dollars in each of the months next ensuing, until the whole shall be paid; which sum or sums so borrowed shall be vested in the commissioners of the Internal Improvement fund, to be applied by them in the manner, and for such purpose, as shall be directed by law; and on the payment of each and every of the said sums of money, the Governor is hereby authorized to cause to be issued, for the amount of each sum of money so borrowed by virtue of this act, negotiable certificates of stock, signed by the auditor general and countersigned by the State treasurer, setting forth that they pertain to the canal loan, bearing an interest of five per centum per annum, payable half yearly, at the Bank of Pennsylvania; which stock shall be transferrable on the books of the auditor general, or at the Bank of Pennsylvania, by the owner or owners of the same, his, her, or their certain attorney; and new certificates for the sum shall be issued by the auditor general and State treasurer to the new holders; and the stock shall be reimbursable and payable by the Commonwealth on the fourth day of March, in the year one thousand eight hundred and fifty-eight.

Section 2. Be it further enacted by the authority aforesaid, that the faith of this Commonwealth is hereby pledged, that the certificates of stock which shall be created or issued by virtue of this act, shall be the only negotiable certificate of stock which shall be created or issued under the authority of this Commonwealth, for and during the term of one year, from and after the passing of this act; provided, however, that the said President, Directors, and Company of the bank of Pennsylvania shall fully and punctually pay into the State treasury the said sum of four millions of dollars, in the manner aforesaid.

Section 3. And be it further enacted by the authority aforesaid, that all the money which shall be loaned to the Commonwealth, in pursuance of this act, shall remain in the Bank of Pennsylvania to the credit of the commissioners of the Internal Improvement fund, subject to their draft or order; and all the moneys belonging to this Commonwealth, whenever lying inactive, whether the same be under the control of the State treasurer or of the commissioners of the Internal Improvement fund, or any other officer or agent of this Commonwealth, shall be deposited in the bank of Pennsylvania, and remain there until drawn out for purposes prescribed by law.

Section 4. And be it further enacted by the authority aforesaid, that

the act entitled "an act to incorporate the subscribers to the Bank of Pennsylvania," passed the thirtieth day of March, in the year seventeen hundred and ninety-three, together with all the acts supplementary to and connected with the said act, be and the same are hereby continued in full force and virtue for the term of twenty-five years, from and after the expiration of the limitation of the acts now existing, that is to say, until the fourth day of March, which will be in the year one [thousand eight] hundred and fifty-eight, as fully and effectually, and to all intents and purposes as though this limitation had been contained in the said acts respectively; subject nevertheless to the alterations, modifications, and restrictions hereafter mentioned; provided, however, that the President, Directors, and Company of the Bank of Pennsylvania shall lend to the Commonwealth of Pennsylvania, on the credit thereof, such sum or sums of money as may be required by the Governor under the authority given to him, and in the manner, and on the terms, prescribed in the first section of this act:

Section 5. And be it further enacted by the authority aforesaid, that from and after the first Monday in February, 1831, ensuing, the affairs of said corporation shall be managed *shall be managed* by sixteen directors, four of whom shall be annually appointed by the Governor from any part of the Commonwealth, and be removable at his pleasure, and twelve of whom shall be elected yearly and every year by the stockholders, eight of which number of said directors shall form a quorum for the transaction of any business, but ordinary discounts may be made by the President and such number of directors as shall be designated for that purpose, by the rules and regulations of the board of directors; and in case of the death or resignation of any director elected by the stockholders, before the expiration of the year for which he was elected, the board of directors may supply the vacancy by electing another director.

Section 6. And be it further enacted by the authority aforesaid, that the capital stock of the said corporation shall not exceed two millions and five hundred thousand dollars, and the shares thereof shall be assignable and transferrable in such manner as the rules and regulation of the board of directors shall ordain; but no stockholder indebted to the institution shall be authorized to make a transfer or receive a dividend, until such debt is discharged or security given for the same to the satisfaction of the board of directors; and if the debt shall remain unpaid for the space of sixty days, then and in such case, the president of said corporation may, after giving ten days' notice thereof to such stockholder or his agent, cause the share or shares of such stockholder, or so many thereof as the said President may deem necessary, to be sold, and after applying the proceeds of sale (deducting expenses) to the payment of such debt, shall hold the surplus, if any, to the credit of the said stockholder.

Section 7. And be it further enacted by the authority aforesaid, that the same privilege and authority given by law to any bank within this Commonwealth to purchase or sell its own stock, or the stock of any other incorporated bank in this State, treasury notes, or of the public

stock of the United States, or of this State, or the stock of any of the incorporated companies of this State for the improvement of roads and inland navigation, be and the same are hereby extended to the President, Directors, and Company of the Bank of Pennsylvania.

(Endorsed:) M. MALLEY.

Read January 11, 1830; ordered, Thursday 14.

Fourth. The following acts of assembly, passed from time to time, to show the practice prevailing in the legislature, when it was intended to reserve the power of taxing incorporated banks in futuro, and of altering or otherwise interfering with their charters, and also to show that a tax on dividends to be declared in future was regarded as the consideration of the franchise of banking in each particular case, to wit: The act of 1813–'14, entitled "an act regulating banks," Pamphlet Laws of that year, page 154. Section 10 of said act provides, that immediately after the declaration of the dividends or nett profits, on the first Monday of November in every year, the president, directors, and company of each of the said banks shall transmit six per cent. on the whole amount of the dividends which shall have been declared on said day, and during the preceding year, to the State treasurer for the use of the Commonwealth. And if any of the said annual payments be not made within two months after the said first Monday of November in every year, (or if no dividend shall have been declared and made during the preceding year, ending with the said first Monday of November in every year,) by any bank having been incorporated for six months previous to said last mentioned day, the charter of the bank so neglecting to pay or declare dividends shall from thenceforth be absolutely null and void, &c.

And by the 18th section of said act it is further enacted: "That if it shall appear that the charters and privileges by this act granted to any of the banks herein mentioned are injurious to the citizens of this Commonwealth, the legislature shall have full power to revoke and annul them, or any of them, at any time they may think proper."

Also to the act of 25th of March, 1824, entitled "an act to recharter certain banks," Pamphlet Laws of 1823–'4, page 59, section 3d, article 24th, provisions similar to that of the preceding act, except that the amount to be paid upon the dividends was 8 per cent. instead of 6 per cent.; and in the 9th section the same power reserved by the legislature over the banks whose charters are therein renewed, as is done in the preceding act.

Also the Bank of Erie in 1826, Pamphlet Laws of 1825–'6, page 257, was made expressly subject to like tax, "restriction," &c., as by the act of March 25, 1824, with same right to alter, &c.

Also the Bank of Penn Township in 1828, Pamphlet Laws of 1828, page 46, made subject to same tax, with like express power reserved.

The Miners' Bank of Pottsville in 1848, Pamphlet Laws of that year, page 68, subject to same tax, with like express power reserved.

Also Pamphlet Laws of 1828–'29, page 116. The Bank of Wyoming in 1829, made also expressly subject to the tax imposed by the act of 1824; also subject to "such alterations, provisions, and restrictions as the legislature may at any time hereafter think proper to enact for the better regulating the banking institutions of this Commonwealth.

Also Pamphlet Laws of 1828–'29, pages 248–'9. The Bank of Lancaster, charter extended in 1829, subject as follows: "Subject, nevertheless, to the like provisions and restrictions, and also to all requisitions as to a bonus or premium to be paid to the Commonwealth as a consideration for the privileges herein granted, as now by law is, or as the legislature may at any time hereafter demand, and to such other restrictions and regulations as the legislature may at any time enact for regulating the banking institutions of this Commonwealth."

Also Pamphlet Laws of 1828–'9, page 361, Gettysburg Bank charter renewed with a similar provision to that in the renewal of the Bank of Lancaster, next preceding.

Also Pamphlet Laws of 1829–'30, page 86, charter Bank of Pennsylvania; nothing said about tax or reserved power.

Also Pamphlet Laws of 1829–'30, page 178. The charters of Southwark Bank, the Northampton Bank, and the Farmers' Bank of Bucks county, extended April 3d, 1830. The 8th section of that act provides as follows: "The banks hereby rechartered shall be subject to the like provisions and restrictions, and also to all requisitions as to a bonus or premium to be paid to the Commonwealth as a consideration for the privileges herein granted, as now by law is, or as the legislature may at any time hereafter demand, and to such other restrictions and regulations as the legislature may at any time enact for regulating the banking institutions of this Commonwealth.

Also Pamphlet Laws of 1830–'31, page 73. The Mechanics' Bank charter, extended in 1831, is made subject to such alterations, provisions, and restrictions as the legislature may at any time hereafter think proper to enact for the better regulating of the banking institutions of this Commonwealth; and also to all requisitions as to a bonus or premium to be paid to the Commonwealth as a consideration for the privileges herein granted, as now by law is, or as the legislature may at any time hereafter demand.

Also Farmers' Bank of Reading; Pamphlet Laws of 1830–1, page 82; same proviso as above.

Also Commercial Bank of Pennsylvania; ibid, page 99, charter renewed; same provision as above.

Northumberland Bank, charter renewed; ibid, page 298; same provision as above.

Lebanon Bank, charter renewed; ibid, page 299; do. do. as above.

Northern Liberties, charter renewed; ibid, page 244; do. do. as above.

Monongahela Bank; ibid, page 244; do. do. as above.

Also Pamphlet Laws of 1831–'32, page 234; Bank of Moyamensing incorporated in 1832, made expressly subject to the taxes of the

act of 1824, with the general regulations and reservations as therein, and made also expressly subject to a bonus of $12,500, and not made subject to such further bonus, &c., as the legislature "may hereafter require," as in the preceding bank charters copied.

Also Pamphlet Laws of 1831–'32, page 271; Girard Bank incorporated 1832, to pay a bonus of $75,000, but not subject to such further bonus as the legislature may hereafter require, as in the preceding banks.

Also Pamphlet Laws of 1831–'32, page 360; Montgomery, Chambersburg, Carlisle, and Delaware Banks, made subject to act of 1824, with full reservation of power over them as to future bonus or taxes.

Also Pamphlet Laws of 1831–'32, page 383; Manufacturers' & Mechanics' Bank of the Northern Liberties, in the county of Philadelphia, incorporated: provided that the stockholders shall pay a bonus of $15,000 within one year, subject to same provisions, taxes, and restrictions as in act of 1824, without bonus, in addition of further express liabilities.

Also Pamphlet Laws of 1831–'32, page 385; Doylestown Bank, as above, subject to act of 1824, like provisions, taxes, &c.

Also Pamphlet Laws of 1831–'32, page 601; Bank of Middletown, incorporated 1832, subject to provisions of 1824, and to such other bonus, &c., as the legislature may at any time thereafter impose.

Also Pamphlet Laws of 1832–'33, page 102; Merchants & Manufacturers' Bank of Pittsburg, incorporated in 1833, subject to tax, &c., of act of 1824, and by section 9 to bonus of $30,000, "as a consideration for the said charter," without any clause making them expressly subject to such further bonus as the legislature may choose.

Also Pamphlet Laws of 1833–'34, page 64–65; Kensington Bank, rechartered 1834, made subject to the act of 1824, and by the 5th section. "The privileges hereby granted to the said Bank shall be subject to such alterations, provisions, and restrictions as the legislature may at any time hereafter think proper to enact, for the better regulation of the banking institutions of this Commonwealth, and shall be liable to such taxes, whether on dividends or otherwise, as the legislature may any time hereafter impose."

Also Pamphlet Laws of 1833–'34, page 96; Lumberman's Bank at Warren, incorporated 1834; stock to be sold and premium to be paid into the treasury; bonus $2,500, as consideration of charter, and subject to future alterations, &c.

Also ibid, page 116; Schuylkill Bank of Philadelphia, rechartered 1834, additional stock to be sold and premium to be paid into treasury on account of bonus, and half of profits over 12 per cent. per annum to be paid into the treasury, and made subject to future alteration, taxation, &c.

Also ibid, page 117–'18; York Bank, subject to future alterations, taxation, &c., and half profits over 12 per cent. per annum to be paid into treasury; act of 1824 extended.

Also ibid, page 389; Erie Bank, do. do.; no money bonus.

Also ibid, page 391; Towanda Bank to pay $3,750 to school fund, and to pay half profits over 12 per cent. into the treasury; legislature may make alterations, &c.

Also Pamphlet Laws of 1834–'35, page 109; Bank of Chester co., rechartered, subject to tax on dividends and future legislation.

Also ibid, 110; Bank of Germantown, same.

Also ibid, 111; Easton Bank, same.

Also ibid, 112; Farmers' Bank of Lancaster, same.

Also ibid, 214; Harrisburg Bank, same.

Fifth. The original act incorporating the Bank of Pennsylvania, and its supplements to show the consideration paid by the Bank for her charter, and that she was regarded as a corporation not subject to future taxation at the will of the legislature.

Sixth. Act of June 11, 1840, imposing a tax on the property of banks. It was conceded that the defendant had paid this tax ever since the passage of this act, but it was at the same time denied that the Bank was liable therefor, and asserted that it had been paid through a mistaken notice of liability.

Defendant closes.

The plaintiff, as rebutting, give in evidence the following acts of assembly:

Plaintiff reads an act to incorporate the Pennsylvania and Ohio Canal Company; authorizes the Mechanics' Bank to pay $100,000, and relieves it from all future taxation, and continues its charter 25 years, required to subscribe for 1,000 shares of stock in said Canal company, or pay $100,000 to the State.

Western Bank, Philadelphia, 1832–'3, p. 503; Mechanics and Manufacturers' Bank, Northern Liberties, $\frac{1}{3}$ bonus, 1833; $\frac{1}{3}$, 1834; $\frac{1}{3}$, 1835; subjected afterwards to tax on dividends.

Merchants and Manufacturers' Bank of Pittsburg, p. 102, $30,000 required to be paid for the charter, consideration of said charter, paid the graduating tax notwithstanding.

Pamphlet Laws, 1835–'6, p. 504, Mechanics and Manufacturers' Bank of Northern Liberties, bonus of $30,000 for renewal of charter, but is subject to the tax in terms.

And the defendant having admitted that the State owned three-fourths of the capital stock of the Bank of Pennsylvania, until the year 1843, when it was sold again, closed its case.

Whereupon the defendant called the court to charge the jury as follows, to wit:

The court is respectfully requested to charge the jury as follows:

1st. That where a bank purchases a charter by a bonus, consisting of a loan, and made to the Commonwealth at a premium, or by the payment of a gross sum agreed on between the parties, the legislature cannot further burden the franchise by laying a further impost on dividends, present or prospective, unless it be so agreed by the contracting parties.

2d. If the jury should be of opinion that the loan and premium

act of 1824, with the general regulations and reservations as therein, and made also expressly subject to a bonus of $12,500, and not made subject to such further bonus, &c., as the legislature "may hereafter require," as in the preceding bank charters copied.

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Fifth. The original act incorporating the Bank of Pennsylvania, and its supplements to show the consideration paid by the Bank for her charter, and that she was regarded as a corporation not subject to future taxation at the will of the legislature.

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Whereupon the defendant called the court to charge the jury as follows, to wit:

The court is respectfully requested to charge the jury as follows:

1st. That where a bank purchases a charter by a bonus, consisting of a loan, and made to the Commonwealth at a premium, or by the payment of a gross sum agreed on between the parties, the legislature cannot further burden the franchise by laying a further impost on dividends, present or prospective, unless it be so agreed by the contracting parties.

2d. If the jury should be of opinion that the loan and premium

thereon mentioned and provided for in the act of 1830, extending the charter of the defendant, was agreed upon by the contracting parties as the consideration in purchase of the franchises granted by the act in lieu and exclusive of a tax upon dividends, it is not in the constitutional power of the Commonwealth to add to or increase that consideration, by laying an impost on the annual dividends thereafter to be declared and divided by the said defendant among its stockholders.

3d. That there is evidence in the cause from which the jury may ascertain that the agreement and understanding of the parties was as stated in the foregoing points.

4th. That the act of 1830, extending the charter of the Bank of Pennsylvania, is a contract executed, and the consideration paid and accepted by the Commonwealth; and, therefore, the act of 1848 applied to the Bank of Pennsylvania, is unconstitutional and void.

5th. That the right to make and declare dividends of the profits of a bank is part of the franchise granted by the charter, and where an impost is levied, or to be levied, on dividends payable to the Commonwealth, it is to be considered as in purchase of the charter, unless otherwise stipulated, which precludes the legislature from laying further imposts on dividends, unless the power to do so be reserved by the charter, or subsequently conceded by the bank.

6th. That where, by the several acts of assembly, given in evidence, it appears a per centage is charged upon the future dividends to be declared by the banks so chartered to be paid to the Commonwealth, such per centage is not to be deemed a tax on the corporate property of the said bank, but a premium or bonus paid, or to be paid, in purchase of the franchise, which the Commonwealth is not at liberty to add to, or increase, unless she has reserved the power so to do in the said acts of incorporation, or it has been subsequently conceded by the corporation.

7th. That the act of 11th April, 1848, whether considered alone, or in reference to, and in connexion with, the other acts in pari materia, given in evidence by the defendant, is not like the act of 1840, an act levying a tax upon the corporate property of the bank, in the proper acceptation of the term "tax," but is to be regarded as the imposition of additional sums as consideration, or in payment of the several franchises heretofore conceded to the incorporated banks of the Commonwealth; and is, therefore, in its application to the Bank of Pennsylvania.

8th. But in the proceeding under the [act] of 30th March, 1811, the Commonwealth can only recover interest on the principal sums charged in the account settled by the officers of the State, if any, to be computed 3 months after the date of the said settlement made.

THE PRESIDENT, Directors, and Company of the Bank of Pennsylvania, plaintiffs in error and defendants below,
vs.
THE COMMONWEALTH of Pennsylvania, defendant in error and plaintiff below.

Issue a writ of error to the judges of the court of common pleas of Dauphin county, to remove the record between the above named parties, being number 20, August term, 1851, returnable to the next return day of the supreme court of the middle district.

THOS. S. BELL,
GARRICK MALLORY,
Attorneys for plaintiff in error, May 10th, 1852.

To the Prothonotary of the supreme court, in and for the middle district.

Writ of error.

PENNSYLVANIA, *sc.*

The Commonwealth of Pennsylvania, to the judges of the court of common pleas of the county of Dauphin, greeting:

Because in the record and process, and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ between the Commonwealth of Pennsylvania, [L. S.] plaintiff, vs. the President, Directors, & Company of the Bank of Pennsylvania, defendants, as it is said, manifest error hath intervened, to the great damage of the said defendant, as by the complaint of the same we have received information. We, willing that, if any error be therein, it should be corrected, and that speedy justice be done to the parties in this part, do command you, that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of our supreme court, at a supreme court to be held at Harrisburg, in and for the middle district of said Commonwealth, on the 21st day of June next, A. D. 1852, and this writ; that the record and process aforesaid being inspected, we may further cause to be done, what of right and according to our laws and customs ought.

Witness the honorable John B. Gibson, esq., doctor of laws, chief justice of our said supreme court at Harrisburg, the 3d day of July, in the year of our Lord one thousand eight hundred and fifty-one, and of the Commonwealth the seventy-sixth.

Allowed by R. COULTER.
P. C. SEDGWICK,
Prothonotary of the middle district.

THE PRESIDENT, Directors, and Company of the Bank of Pennsylvania, plaintiffs in error and defendants below,
vs.
THE COMMONWEALTH of Pennsylvania, defendant in error and plaintiff below.

Joseph Trotter, president of the said Bank and agent for the plaintiff in error, being duly affirmed according to law, doth depose and say, that the writ of error sued out in this case is not intended for delay.

Affirmed. JOSEPH TROTTER.

Subscribed before me this 11th day of May, A. D. 1852.

P. C. SEDGWICK,
Prothonotary.

Mr. Joseph Trotter, William E. Hacker, do severally acknowledge to owe and be indebted to the Commonwealth of Pennsylvania in the sum of sixty-five thousand dollars, upon condition that the plaintiffs in error above named shall prosecute their writ of error with effect, and if the judgment of the court of common pleas of Dauphin county, to which the writ of error is taken, be affirmed, that they will satisfy and pay the debt, damages, and costs recovered, together with such costs as shall be awarded by occasion of delay of execution, or else we will do it for them.

JOSEPH TROTTER,
WM. E. HACKER.

Taken and acknowledged before me this 11th day of May, A. D. 1852.

P. C. SEDGWICK,
Prothonotary.

Opinion of the court—Black, C. J.

THE BANK OF PENNSYLVANIA
vs.
THE COMMONWEALTH.

The Bank of Pennsylvania was first chartered in 1793. The charter was renewed in 1810, and afterwards again in 1830. By the last mentioned act the bank was incorporated for twenty-five years, with a capital of two and a-half millions of dollars, and was required to loan to the Commonwealth a sum not exceeding four millions of dollars, at a premium of five per cent., the certificates to bear an interest of five per cent. It was also enacted, that all certificates of State stock should be issued and transferred at the Bank of Pennsylvania without charge either to the Commonwealth or to the persons making such transfers. These conditions of the charter were accepted and complied with. The State was the owner of three-fifths of the capital stock, and for that reason, or some other, this bank was not made subject to the graduated tax upon dividends provided for by the act relating to banks, passed 1st

April, 1835. But in 1843 the State sold out her shares of the stock, and in 1848 a law was passed extending the act of 1835 to all banks, whose charters had been reserved, or should afterwards be reserved, "except in cases where there is an express exemption in the act extending or renewing their charters." The auditor general, deeming the Bank of Pennsylvania within the terms of this act, made out an account against it for taxes unpaid in 1848, 1849, and 1850, amounting, with interest, to $51,068 75. From this account the bank appealed to the common pleas of Dauphin, whose judgment was in favor of the Commonwealth. The case comes to us on writ of error.

The charter contains no express stipulation on the part of the State not to tax the bank or its stockholders, either for its property, its profits, its capital, or its franchises. It is therefore literally within the terms of the act of 1848. It can only relieve itself from the payment of the tax by showing the act which imposes it to be unconstitutional and void. This it asserts is the case, on the ground that the charter was a contract, and the act of 1848 a violation of it.

That an act of incorporation is a contract between the State and the stockholders is held for settled law by the Federal courts, and by every State court in the Union. All the cases on the subject are saturated with this doctrine. It is sustained, not by a current, but by a torrent of authorities. No judge, who has a decent respect for the principle of stare decisis, that great principle which is the sheet anchor of our jurisprudence, can deny that it is unmovably established. Sitting here to declare the law as it is, not as we would have it to be, our private opinions are not entitled to a feather's weight in opposition to the universal voice of our predecessors and our cotemporaries, in every part of the country. I say this for myself alone. My brethren have given me no authority to commit them on it. But we are all willing, though for different reasons, to concede the correctness of the argument for the plaintiff in error, so far as it asserts that the charter is a contract. This being assumed, what is the true construction of it?

I have already said that there is no exemption from taxation stipulated for in the charter. The act of incorporation is entirely silent on that subject. We are then to consider whether the State lost the power to tax the dividends of the bank by not renewing it in words; or whether the bank, by not bargaining for exemption, left its stockholders liable to pay out of their profits a share of the public expenses. We think the latter proposition is true, and not the former.

The taxing power is an incident of the highest sovereignty. It is an essential part of every independent government. By the Constitution, and by the principles which lie at the foundation of every organized society, the State may tax all the persons, natural and artificial, within her borders, and compel them to contribute such a part of their property and income as the legislature may think right, to defray the expenses and meet the engagements of the government. The wealth of men who are associated together is not less subject to taxation than if it were owned by individuals. The right is as clear to tax an incorporated company as a mercantile partnership. The State being in full

possession of this power at the time of the contract in question, it is impossible to see how she could have lost it by not bargaining with the bank to keep it.

It is the appointed duty of the legislature to use the power of taxing the people with justice and moderation, and not to alien it away. To sell out this part of the State's sovereignty is not one of their regular functions. It is entrusted to the legislative department, not to be annihilated, but to be exercised and administered. The power is given by all, and ought to operate on all for the benefit of all. Taxation to be just must be equal, and to be equal it must be universal. The whole community has, therefore, a deep interest in retaining the power undiminished in the hands where the Constitution has placed it. Chief Justice Marshall (4 Peters, 561) thought it so important that he seemed to doubt whether a State could relinquish it at all. That it can be surrendered, at least partially, has since been settled in Gordon vs. the Appeal Tax Court, (3 Howard, 146.) But surely a power so vitally necessary to the very existence of a State is not to be taken as surrendered, relinquished, and given up by a contract which says nothing about it.

If acts of incorporation are to be so construed as to make them imply grants of privileges, immunities, and exemptions which are not expressly given, every company of adventurers may *may* carry what they wish without letting the legislature know their designs. Charters would be framed in doubtful or ambiguous language on purpose to deceive those who grant them; and laws which seem perfectly harmless on their face, and which plain men would suppose to mean no more than what they say, might be converted into engines of infinite mischief. The legislature, without knowing or intending it, might be thus induced to disarm the State of its most necessary powers, and transfer them to corporations. The continued existence of a government under such circumstances would not be of much value. There is no safety to the public interests except in the rule which declares that the privileges not expressly granted in a charter are withheld.

Again, where is the end of a claim like this? If the privilege of being exempt from taxes may be asserted by a bank, because its charter does not say that it shall be taxed, what other privilege may it not claim on the same ground? If silence is a gift of one privilege, why shall it not confer every other? This rule of interpretation would make every act of incorporation a grant of unlimited power, except in so far as the power might be limited by express reservations in favor of the State.

Taking no other than the simplest commercial view of the transaction, forgetting the injustice of freeing one portion of the people from the public burdens, and accumulating them all upon the rest, considering the members of the legislature as the mere factors of the State for the sale of immunities and privileges, and the bank as a purchaser, the question still recurs, what and how much did it buy? If the Government is to be looked on as a dealer in commodities of this sort, the right conceded to

other traders ought not to be denied her, of retaining whatever she does not choose to part with. A man who has two acres of land, and conveys one of them, does not thereby lose his title to the other. If I sell my horse, the purchaser does not by that means gain a right to my ox.

The interpretation which would make the silence of the charter imply a relinquishment of the taxing power is against all analogy. Where land or other property is granted by the State, the grantee does not take it free from taxation. I do not know a single argument in favor of implying such an exemption from a bank charter which would not apply with quite as much force to a patent for land. If an act of incorporation is a contract, so is a patent. If the payment of a bonus for the charter implies that no more shall be paid, the same inference may be made from the payment of purchase money of land. If a bank may be taxed so heavily as to take all its profits, the power when exercised upon land may be as much abused.

The powers exercised by Congress under the Constitution of the United States are made up of those delegated to the Federal Government by the States. But the powers not delegated are reserved, and though an amendment was added, which declared this to be the construction, it was not doubted that it ought to be so interpreted independent of any provision in the instrument itself. The amendment was opposed on the sole ground that it was useless, and its adoption only proves how jealous the people were of the rights of the States. It will take more than we have yet heard to convince us that the silence of the Constitution has withheld the sovereign powers of the States from the General Government, only to be absorbed by acts of incorporation, which are equally silent. We are not satisfied that [a] bank charter, intended merely to make money for a few private individuals, should be more liberally construed than that great compact ordained by the people of the States for the most important of all earthly purposes, "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity."

The argument of the plaintiff in error is not only contrary to reason, against sound policy, inconsistent with the public safety, and opposed to plain analogy, but what is perhaps more to the purpose, it is also in direct contradiction of the judicial authorities. It would be losing time to refer to cases abroad when those decided in the Supreme Court of the United States (which in cases like this is the tribunal of the last resort) are conclusive, direct, and full to the point. The Providence Bank vs. Billings (4 Peters, 514) is so much like the case at bar that no material difference is discernible. The legislature of Rhode Island in 1791 granted to the Providence Bank a charter which, like that of the Bank of Pennsylvania, was silent on the subject of taxation. In 1822 a law was passed taxing its capital. The payment of the tax was resisted as a violation of the charter; but the court was unanimously of the contrary opinion, and declared that an abandonment of the taxing power could never be presumed in any case where the delibe-

rate purpose of the State to abandon it did not appear. "This power," said the court, "resides in Government as part of itself, and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature." In the Charles River Bridge vs. the Warren Bridge, (11 Peters, 420,) the same principle was reaffirmed in still broader and stronger terms. It was held in that case that no contract can be created between the State and a corporation by implication, and that all the privileges, exemptions, and immunities, not granted in plain words, are reserved to the State. "Whenever" says Chief Justice Taney, "any power of the State is said to be diminished, whether it be the taxing power or any other affecting the public interests, the same principle applies, and the rule of construction must be the same." These cases are in entire harmony with others in the same court, (4 Peters, 165, 3 Peters, 289,) and with the English cases decided before and since.

These decisions of the Supreme Court of the United States are binding on the State courts, not merely as precedents, and therefore proving what the law is, but as the deliberate judgment of that tribunal with whom the final decision of all such questions rest. The State courts have almost universally followed them; but no tribunal in the Union has acceded to the rule they lay down with a more earnest appreciation of its justice than did this court, in the Bank of Easton vs. the Commonwealth, (10 Barr., 442.) That was a much stronger case against the Commonwealth than the one now before us; there the charter was not entirely silent on the subject of taxation. The bank was required to pay taxes at a fixed rate, and that rate was increased by subsequent legislation. It was plausibly argued, that the rate of taxation agreed upon in the charter implied a contract on the part of the State to claim nothing more; but it was held otherwise, on the ground that, if such an exemption existed, it must be the result of a deliberate intention to relinquish this prerogative of sovereignty distinctly manifested. The court declared, that "to give the act of incorporation such a construction would be a gross violation of the wholesome principle, that an abandonment of the power of taxation is only to be established by clearly showing this to have been the deliberate purpose of the State."

If any thing is settled it is this rule of construction, that a corporation takes nothing by its charter but what is plainly expressed and unequivocally granted, and that in all things else the power which the State may exercise over its affairs are as full and ample as if it were an individual carrying on the same business. When this principle comes to be applied to the case in hand, the argument of the plaintiff in error dissolves into nothing.

Two cases decided by State courts have been cited, and apparently relied on with some confidence, in which it was held that certain banks were impliedly exempt from taxation, though there was no express

stipulation to that effect. One is the State of Ohio vs. the Commercial Bank of Cincinnati, (7 Ohio Rep., 125;) the other is the Union Bank vs. the State of Tennessee, (7 Yerger, 490.) These cases resemble that of the Easton Bank more than the one before us. In both the grants were stronger than this; in both the authorities were totally overlooked or disregarded; and in neither of them is the reasoning of the court at all satisfactory.

The judge of the common pleas, among the reasons given for his opinion, said, that this tax was imposed on the property of the stockholders, and not on the franchises of the bank. I do not see why this should have been excepted to, since we can only take notice of false conclusions, and not of bad reasoning; but we have no doubt the judge was right. The tax is not laid nor exacted until the dividends are declared, and then they are held by the bank as a depository. The bank is liable to an action for refusing to pay them. But it makes no difference whether they be called the franchise of the corporation or the property of the corporators; in either case they may be taxed. In the Providence Bank case the capital was taxed; profits are quite as legitimate, and certainly a much fairer subject of taxation than capital, without regard to its productiveness.

It was shown on the trial that numerous other bank charters expressly reserved the right of taxation; from which the inference is attempted to be drawn that, without such a reservation, the legislature supposed the right would be gone. We can only say, if such was the opinion of the legislature, it was a mistake; it does not change the law; probably, however, it was done, not in ignorance, but from a wise caution. It may have been prompted by a natural and prudent desire to take away from the banks all possible pretence for resisting the lawful authority of the Commonwealth.

The court below charged the jury, that the evidence of public embarrassment, the proclamation and message of the Governor, the journals of the house of representatives, and the reports of its committees, should be wholly disregarded. What less could any court be expected to do with such evidence? It was not only of no value, but it was delusive and dangerous. The impropriety of giving any attention to facts and circumstances outside of the record, ought to be very easily seen. The act of incorporation, as it passed both houses and was approved by the Governor, contained no exemption from taxes. In that shape the stockholders, at a meeting twelve days afterwards, accepted and agreed to it, and resolved that "the several provisions of the said act shall be binding on this corporation, according to the true intent and meaning thereof." With what show of propriety can they now go behind the charter, and say that their assent was not given to "the several provisions of the said act," but to something else not contained in it?

If it were allowable to look beyond the written contract for evidence of its terms; if it were not the law, that a previous oral agreement is merged in a subsequent written one, still the evidence here would

amount to nothing, for none was given that showed there ever existed any thing like an understanding or agreement that the bank should be exempt from taxation. If the Governor and every member of both houses had been willing to insert such a stipulation in the act, it would not have been binding until it was actually inserted and accepted by the other party; but no willingness to do so was expressed by the legislature. The Governor and senate said nothing on the subject. The journals given in evidence are those of the house only; and what do they prove? Merely that a minority of that one house was in favor of providing for an annual tax instead of requiring a loan. But of course the majority had it their own way, carried the clause which made the loan a condition, and left the taxing power where it was before, without either surrendering it to the bank, or going through the useless formality of reserving it to the State.

Judgment affirmed.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the [L. S.] supreme court of Pennsylvania, in the middle district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Commonwealth of Pennsylvania and the President, Directors, and Company of the Bank of Pennsylvania, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said President, Directors, and Company of the Bank of Pennsylvania, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what

of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-one.

WM. THOS. CARROLL,
Clerk, Supreme Court, United States.

Allowed by

R. C. GRIER,
Associate justice, S. C., U. S.

To the honorable the chief justice and his associates justices of the Supreme Court of the United States, within named:

The record and proceedings in the plea within named, with all things touching the same, so full and entire as before us they remain, we certify and send, together with this writ, as within we are commanded.

J. S. BLACK,
ELLIS LEWIS,
JOHN B. GIBSON,
W. H. LOWRIE,
GEO. W. WOODWARD.

Citation and service.

The United States of America, to the Commonwealth of Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Pennsylvania, in the middle district, wherein the President, Directors, and Company of the Bank of Pennsylvania are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 24th day of November, in the year of our Lord one thousand eight hundred and fifty-two.

R. C. GRIER,
Associate justice, S. C., U. S.

On this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-two, personally appeared Furman Sheppard, before me, the subscriber, an alderman and ex officio justice of the peace in and for the city and county of Philadelphia, and makes oath that he delivered a true copy of the within citation to James

Campbell, esquire, attorney general of the Commonwealth of Pennsylvania, personally, on this 25th day of November, A. D. 1852.

FURMAN SHEPPARD.

Sworn and subscribed before me, this 25th day of November, A. D. 1852. ELISHA CROWELL, [SEAL.]

Alderman and justice of the peace.

DAUPHIN COUNTY, *ss.*

On the 27th of November, 1852, personally appeared before me, the subscriber, a justice of the peace of said county, James Fox, esq.; and made oath that he delivered a true copy of the within citation to William Bigler, governor of the Commonwealth of Pennsylvania, on the 27th of November, 1852. JAMES FOX.

Sworn and subscribed, November 27, 1852, before W. KLINE.

Know all men by these presents, that we, Joseph Trotter, Gideon Scull, and William E. Hacker, of the city of Philadelphia, and Commonwealth of Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania, in the full and just sum of forty thousand dollars, lawful money of the United States, to be paid to the said Commonwealth of Pennsylvania, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-two.

Whereas lately at a supreme court of Pennsylvania, in the middle district, in a suit depending in said court, between the said Commonwealth of Pennsylvania and the President, Directors, and Company of the Bank of Pennsylvania, judgment was rendered against the said President, Directors, and Company of the Bank of Pennsylvania; and the said President, Directors, and Company of the Bank of Pennsylvania having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Pennsylvania, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such, that if the said President, Directors, and Company of the Bank of Pennsylvania shall prosecute their writ to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to main in full force and virtue. JOSEPH TROTTER, [SEAL.]

G. SCULL, [SEAL.]

WM. E. HACKER. [SEAL.]

Sealed and delivered in presence of—

F. SHEPPARD.

Approved by R. C. GRIER,

Associate justice, S. C., U. S.

COMMONWEALTH OF PENNSYLVANIA,
Supreme court, in and for the middle district, ss.

In obedience to the foregoing writ, I herewith transmit to the Supreme Court of the United States a full and complete transcript of the record and proceedings of the supreme court of the Commonwealth of Pennsylvania, in and for the middle district, so far as the same remains of record in my office, in a certain suit therein determined in favor of the Commonwealth of Pennsylvania, defendant in error, against the President, [Directors,] and Company of the Bank of Pennsylvania, plaintiffs in error.

Witness my hand and the seal of the said court at Harrisburg, this 9th day of December, A. D. 1852.

[SEAL.]

PHILO C. SEDGWICK,
Clerk of said court.